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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

THE ASSOCIATED PRESS,
Petitioner,

against

EDWIN A. WALKER,
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Respondent respectfully prays that the Writ of Certiorari sought by Petitioner in this cause be denied for the reason that the judgment of the Court of Appeal, Second Circuit, State of Louisiana, is based upon a false publication by Petitioner that Respondent committed a crime of assuming command of a mob and leading a charge against U. S. Marshals, which publication was found by the State Court to have been made with "actual malice", . . . "that is, with knowledge that it was false or with reckless disregard of whether it was false or not", which constitutes a "severe departure from accepted publishing standards". Under provisions of the Louisiana Constitution and statute, that appeals shall be both upon the law and the

Facts, and the judgment of the Louisiana Court of Appeals, with Writ of Certiorari refused by the Louisiana Supreme Court, should be final.

ISSUES.

I. Does the Judgment of This Court in the Associated Press v. Walker (Oct. Term, 1966, No. 150) Require Summary Reversal of the Judgment Below?

II. Is the Judgment Below in Violation of the First and Fourteenth Amendments to the Federal Constitution?

III. Is the Record on the Issues of "Actual Malice", "Substantial Truth" and "Fair Comment" So Lacking in Evidentiary Support for the Judgment Below as to Violate the First and Fourteenth Amendments to the Federal Constitution?

IV. Should This Court Reverse the Judgment of the Appellate Courts of Louisiana, Holding That Petitioner Had Not Been Denied a Fair and Impartial Trial?

V. Do the First and Fourteenth Amendments to the Federal Constitution Preclude Venue of This Case in Caddo Parrish, Louisiana?

STATEMENT OF THE CASE.

Petitioner seeks certiorari to review a judgment of the Louisiana Court of Appeal, in the sum of $75,000.00, reducing a jury verdict of $2,500,000 (the jury's original verdict was $5,000,000, which was the amount originally sued for by Respondent, before the demand was reduced in an amended pleading).

The judgment provided recovery of damages for Libel, arising out of news reports by Petitioner that Respondent had encouraged elements of a rioting mob and led a charge against federal marshals on the campus of Mississippi University, which defamatory statements were found to

be false by both the Trial Jury, and the Louisiana Court of Appeals, under its appellate jurisdiction to review both Facts and Law.

The parties, the subject matter and the evidence, so far as Associated Press are concerned, are identical with the Associated Press v. Walker (Oct. Term, 1936, No. 150), referred to by Petitioner as "the Texas Case", except that Associated Press brought to Court in Louisiana the witness, Savell, the President of Associated Press, the Chief of the New Orleans Bureau and various Associated Press Newsmen.

Petitioner seeks summary dismissal of the Louisiana Case upon the basis of the judgment of this Court in the Texas Case, as to which it is respectfully suggested that the Texas Case is still pending on Petition for Rehearing in this Court, and the judgment, as rendered, has only reversed and remanded the Texas Case for further proceedings, which should not indicate a summary dismissal of the instant case.

Pursuant to the assertion of Petitioner that the facts in the Texas and Louisiana Cases are identical and that there is No Evidence in the record to establish falsity of its reports, the summary of facts by the Texas Court of Civil Appeals, 393 S. W. (2) 671, should present an authentic statement, uncolored by comments of either party, as follows:

"Appellant contends that the Court erred in rendering judgment for appellee rather than if because (1) as a matter of law the evidence conclusively established that the 'charge' and 'command' statements were substantially true; (2) such statements were a fair comment about a matter of public concern published for general information and thus privileged under the provisions of Art. 5430, V. A. C. S.; (3) such statements made without malice are protected

by the First and Fourteenth Amendments to the Constitutions of the United States; * * *"

"We affirm."

"The evidence considered in its most favorable light in support of the findings of the jury and the judgment of the court is in essence as follows: At approximately 4:00 p. m. of the day in question, a ring of Federal marshals had encircled the Lyceum Building. Walker arrived on the campus about 8:45 p. m. At that time a loud, violent riot was in progress in an area of the campus known as the Circle. A crowd assembled in the Circle area, began taunting and jeering the marshals. By 8:00 p. m. a full scale riot had erupted which was to continue all night, destroy 16 automobiles, kill two people, injure 50. The rioters would form into groups and charge toward the marshals, throwing bricks, bottles, rocks, sticks and other missiles. The rioters attempted to charge the marshals with a fire truck and then with a bulldozer. 'Molotov cocktails' were hurled at the marshals. Finally rifle fire erupted. The next morning the campus looked like a battlefield. Soon after his arrival, Walker, after some urging to say a few words, spoke from the steps of the Confederate Monument. While there is some dispute as to what he said, there is testimony that he told the assembled groups that while they had a right to protest that violence was not the answer. He was 'booed' or 'jeered' at this time and again when arging a cessation of violence. [illegible] and others walked in the direction of the Lyceum Building where the marshals were stationed, but he never came closer to the marshals than the monument or the [illegible] football field. He was there to [illegible] what happened. He wanted a peaceful demonstration, not a riot. In this instance there was not [illegible] or unlawful. He had the same right to come upon the campus and observe the activity as did

the various members of the press who were there to observe and to report. He was not in the forefront, nearer the front of the crowd. He never hurled any rock, brick or other missile in the direction of the marshals or otherwise. He did not participate in the riot. He never advised or suggested that others do so. He issued no instructions nor did he counsel or suggest to others that they charge the marshals or take any other offensive action toward them. The crowd was disorganized. It was a leaderless group. Groups were milling aimlessly. No one, including Walker, made any effort to assume leadership. Walker did not run. He never got out of a slow walk, described as strolling, sauntering, or 'moseying' along. He never participated in the riot or violence in any manner. He made no effort to incite or move others to action or violence. When asked how to drive the marshals out, he said 'You don't.' Throughout the trial Walker maintained the firm position that because of his opposition to the use of Federal troops within a State, and his personal knowledge of the deviation between the occurrences at Little Rock where he was indeed in command and the newspaper stories of those occurrences, that he was at Oxford to see for himself at first hand what was actually going on. He maintained that he did not participate in the rioting. He was present for the sole purpose of observing. The jury saw him, observed his demeanor, heard what he said, and believed him."

The jury's finding that Petitioners raised [illegible] fair comment, not permitted to go [illegible] opinion of the Judge was [illegible] opinion.

Petitioner complains of alleged [illegible] on the part of counsel for respondent, but [illegible]

no reference to the record where Petitioner made objection to the remarks of counsel at the time they were made. Nor did Petitioner move for a mis-trial, before submitting the case to the jury. Having elected to await the outcome of the jury's verdict, the question arises as to whether due Process of Law would permit Petitioner to complain after return of an adverse verdict.

Petitioner complains of the Finding by the Court of Appeal that: where Associated Press Newsman, Savell, falsely reported facts alleged to have been personally observed, there "can be no real basis for mistake or error honestly made", after which the Court concluded that "the statements were either false or true and knowlingly represented as such". Recognizing that falsity had been proved to both the jury and to the Court, the Court properly and logically found that the representations were made with knowledge of their falsity, or with reckless disregard for the truth, and, as such, were made with "actual malice" (R. 2779, p. 9, Petition for Writ).

Without confronting the real issue, or endeavoring in any way to explain how an eye-witness could honestly make a false report so detailed and deliberate as the Savell report of October 3, 1962, Petitioner merely commented that the theory had "repeatedly, but unsuccessfully" been urged in this Court and in the Texas Case . . . . still leaving open the glaring question as to how such a report could be false, without being also "knowingly false".

Petitioner also complains of improper venue, which has heretofore been passed upon by both Appellate Courts in Louisiana, with certiorari denied by this Court. (See copy of opinion, Jan. 30/63, Ct. of Appeal, Walker v. Associated Press, 4th Cir., 148 So.(2d) 98 (a), Appx. B to Petition for Writ; Reconsideration Order by Supreme Court of Louisiana, p. 99 (a), Appx. B; Per Curiam Decision of the United States Supreme Court, p. 99 (a), Appx B.)

REASON FOR DENYING THE WRIT

1. Petitioner's plea for a "vindication" of its First Amendment right under the decision of this Court in Associated Press v. Walker (No. 150), is not well taken, first, in contending that the Louisiana judgment "must be reversed, with directions to enter judgment for the Petitioner", since no such judgment was entered by this Court in Case No. 150, wherein the Court's actual judgment provided:

> "The judgment of the Texas Court of Civil Appeals in No. 150 is reversed and the case is remanded to that Court for further proceedings not inconsistent with the opinions that have been filed herein by the Chief Justice, Mr. Justice Black and Mr. Justice Brennan."

Petitioner seeks, on the record of the Texas Case, a more comprehensive judgment in the instant case than was rendered in Case No. 150.

The majority opinion in the Texas Case, by Mr. Justice Harlan, established a new standard of "First Amendment Malice" in Libel Cases involving "public figures", who are not "public officials", as "a severe departure from accepted publishing standards". Such an issue was never litigated in the Texas Trial and Appellate Courts; and, if the opinion of this Court reversing the Texas Courts should become final, it would appear that the judgment of this Court for further proceedings would require the Texas Appellate Courts to clarify their judgment as to whether the undisturbed Findings of the jury that the Associated Press report was false, not fair comment, not published in good faith as the honest opinion of the writer, constitute "malice" amounting to a "severe departure from accepted publishing standards",

An even more basic reason why the opinion of this Court in the Associated Press v. Walker (No. 159) does not require reversal of the instant case, with directions to enter judgment for Petitioner, is that the appeal is still pending upon Respondent's Petition for Rehearing, wherein it has respectfully been pointed out to the Court that critical and decisive issues of Law and Fact have been overlooked in the original opinions, as follows:

1) This Court, on Appeal, has re-examined facts tried by the jury, in violation of the Seventh Amendment.

2) The Court's conclusion, after weighing the facts, that the Associated Press report was not a "severe departure from accepted publishing standards," and was not published with knowledge that it was false" or "with reckless disregard of whether it was false or not",** overlooks decisive facts in the record as follows:

a) The jury's Finding, that the Associated Press report was false, not fair comment and not published in good faith as the honest opinion of the writer, should conclusively refute, as a question of fact, the conclusion that the report, even under necessity for rapid dissemination, was not a severe departure from accepted publishing standards, or was not knowingly** false or not in reckless disregard for the truth. (See R. 57-61; No. 150, Oct. Term, 1966).

[illegible] by Mr. Justice Harlan, in which Mr. Justice [illegible] and Mr. Justice Fortas join.

[illegible] of Mr. Chief Justice Warren, in which Mr. [illegible], Mr. Justice Douglas, Mr. Justice Brennan and [illegible]

b) The reporter, Sewell, author of the false report that Walker was commanding a mob and leading a charge against U. S. Marshals, was acting as an "agent", not as a "correspondent", when he submitted his report to Associated Press, that was published as "hot news".

c) The defamatory publications complained of were published 25 and 50 hours after the event, which should have given time for investigation, and eliminated the "hot news" concept.

d) The conclusion in the opinion by Mr. Chief Justice Warren, "The Trial Judge expressly ruled that no showing of malice in any sense had been made" overlooks the fact that the Trial Court's remarks were made in connection with punitive damages, and did not extend to "actual malice", as conclusively indicated by the fact that the Trial Court did not disturb the jury's Findings in support of actual damages, that the Associated Press report was false, not fair comment, not published as the honest opinion of the writer.

It is respectfully submitted that Petitioner's argument that the opinion of this Court in the Texas Case requires that the Louisiana judgment "must be reversed, if Petitioner's First Amendment rights are to be vindicated", under the circumstances involved in both the Louisiana and the Texas Cases, would expand the First Amendment Freedom into a license to destroy.*

8. The decisive issue is presented by Petitioner under its Second Argument that the Louisiana Court of Appeal, without attempting to justify its Findings on the

* See opinion of Mr. Justice Warren, Case No. 100. "Freedom of the Press under the First Amendment does not include absolute license to destroy [illegible]

basis of any factual difference from the Texas Court,** cannot constitutionally find that the facts in the instant case convict Associated Press of "actual malice" (knowingly false or in reckless disregard for the truth").

It is then argued that the decision of this Court in the Texas Case is "final and conclusive" of the issue of malice here, and that the judgment of the Louisiana Court should be summarily reversed.

This argument raises two questions: 1) What is the judgment of the Louisiana Court? and, 2) Was the judgment within its judicial power under the Louisiana Constitution?

The judgment simply and conclusively found that the false report was made by Associated Press with "actual malice" . . . "knowledge of its falsity" or with reckless disregard for the truth."

After recognizing the New York Times rule, and "its impact upon our jurisprudence", as reflected by Garrison v. Louisiana, 379 U. S. 64, The Court of Appeal proceeded to hold:

"It is our position that Plaintiff furnished satisfactory proof to the jury and to this Court that the Libelous statements were 'made with "actual malice", * * * that is, with knowledge that it was false or with reckless disregard of whether it was false or not'."

"Counsel for Appellees assert that the alleged Libelous statements in the instant case were deliberately made by Van Savell in reporting that Walker committed crimes in assuming command of the mob and leading charges against the United States

** This argument ignores the fact that the Texas record was not before the Louisiana Court.

marshals; and that they were made with knowledge of their falsity or with reckless disregard of the truth."

"It is significant that the words complained of related to actions and conduct which were represented as positive statements of fact personally observed. As so reported there can be no basis for mistake or error honestly made. The statements were either false or, true and knowingly represented as such. Forasmuch as falsity has been proven to the jury and to this Court we are impelled to the conclusion that the representations were made with knowledge of their falsity or with reckless disregard for the truth. We therefore find that the words were libelous, per se, and made with actual malice."*

At page 9 of its Petition for Writ, Petitioner asserts:

"This theory, which was repeatedly but unsuccessfully urged in this Court in the Texas Case, was the keystone upon which the Louisiana Court of Appeal affirmed the Trial Court as to liability"**

Having stated that "it is our position that Plaintiff furnished satisfactory proof of malice", the Louisiana Court has squarely held that "actual malice was proved by the Respondent. Reversal of such judgment, as a question of fact, would require a review of the evidence in the record to establish that the Court's judgment was

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* From No. 10,585 Court of Appeals, Second Circuit, State of Louisiana, Edwin A. Walker, Plaintiff, Appellee v. The Associated Press, et al., Defendants, Appellants (pp. 39-42).

** A keystone more solid, fair and logical would be difficult to comprehend. Any opinion which fails to pass upon the basic question as to how an "eye-witness" could make a false report of an incident so dramatic as a former Maj. General in the U. S. Army assuming command of ragged mob and leading a charge against U. S. Marshals, without the report being "knowingly false or in reckless disregard for the truth" fails to extend to Respondent his Day in Court.

based upon no competent evidence. The record is replete with evidence, including that of Petitioner's witness, Rev. Duncan Gray (R. 2448-2451), that not only refutes the testimony of Associated Press Reporter, Savell, but places him in a position where his false report was, of necessity, "knowingly false".**

That the opinion and judgment of the Louisiana Court of Appeal have found "actual malice" upon the part of the Associated Press, there can be no doubt. That the Finding is supported by competent evidence seems equally certain.

Next, appears the question of the judicial authority of the Louisiana Court to make such Finding of Fact.

The Louisiana Constitution extends to Courts of Appeal, and to the Supreme Court Appellate jurisdiction, with specific provision that "all appeals shall be both upon the law and the facts."*

This Court has recognized the Appellate jurisdiction over factual questions under the Louisiana Constitution

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** The attention of the Court is invited to a comparison between the actual news release by Savell (pp. 204 (a)-207 (a), Apx. to Petition for Writ) and the Cross-examination of Petitioner's witness, Rev. Duncan Gray, which leaves no reasonable doubt that Savell's report that Walker had assumed command of the unit and led a 1,000 man charge across the very area that was occupied by Rev. Gray, prior to Walker's speech from the rostrum, was both false and knowingly false.

* Vol. 2, Art. 7, Sec. 29, West's LSA Constitution:

"The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the District Courts throughout the state have original jurisdiction, and all appeals shall be returnable to the Courts of Appeal."

Vol. 2, Art. 7, Sec. 10, West's LSA Constitution:

"The said Courts of Appeal, in all civil and probate cases within their jurisdiction, shall be given Appellate jurisdiction, the appeal shall be both upon the Law and the Facts."

in Lumberman's Mutual Casualty Co. v. Elbert, 348 U. S. 48, as follows:

"Appellate review in the Federal Courts is, of course, limited by the Seventh Amendment. Parsons v. Bedford (U. S.), 3 Pet. 433, 7 L. ed. 732. In Louisiana Appellate Review in Civil Cases extends to both matters of law and fact. See La. Const., Art. 7, §§10, 29."

This Appellate procedure is also recognized in Booth v. Home Indemnity Co. (5 Cir. 68), 244 F. (2) 568.

Louisiana judicial precedent indicates a long history of evaluation and weighing of the facts by Appellate Court, in order to accomplish justice and reverse such judgments that may appear "manifestly erroneous" either from the weight of the evidence, or possible errors in the Trial Judge's charge to the jury. **Barrera v. U. S. Fire Ins. Co. (1966), ...;** 182 So. (2) 138; 185 So. (2) 219; **Crawford v. Bullock** (1946), 209 La. 552, 25 So. (2) 226 (affirmed by La. Sup. Ct.); **Lorance v. Smith** (La. Sup. Ct. 1932), 1373 La. 883, 138 So. 871.

It is respectfully submitted that the judgments of the Louisiana Courts, including both jury verdict and appellate review, holding Petitioner liable for false news reports accusing Respondent of crime, properly held the reports to be false, knowingly false or published with reckless disregard for the truth. Faith and credit between Courts should indicate that the judgment of the Louisiana Courts should not be summarily reversed, as demanded by Petitioner.

II. As its Third "Reason for Granting the Writ", Petitioner makes the unsupported statement that "there is no more support for a finding that the statements here complained of were untrue and did not constitute fair comment than there is for the finding of 'actual malice'." Completely oblivious to the realms of testimony, the

record that Respondent took no part in the violence of the mob," Petitioner concludes that intervention of this Court is required to prevent an "obvious denial of due process" to protect Petitioner against a judgment, "where there is no evidence establishing the underlying cause of action."

These extravagant assertions by Petitioner are completely refuted by the Finding of the Court of Appeal, as follows:

"The case was presented to the jury following three weeks of trial, the record of which includes the testimony of many witnesses who were in the immediate vicinity of appellee during his presence on the campus. The evidence imposed upon the jury the responsibility of deciding the truth or falsity of the alleged defamatory words and whether they were published with malice. Although the accounts given by these witnesses, particularly as to what plaintiff said in the speech and with respect to his conduct on the campus, are conflicting, the record presents substantial supporting evidence for the jury's verdict, which found it to be false the published statements that [illegible] and led the crowd."

(Decision, Court of Appeal, Walker, Plaintiff-Appellee v. The Associated Press, et al., Defendants-Appellants, p. [illegible] of Petitioner's Appendix to Petition for Writ.)

The opinion by the Louisiana Court of Appeal leaves no doubt that the entire record, including testimony of all witnesses, was carefully reviewed to ascertain whether the jury's verdict that the Associated Press report was false in accusing Respondent of "leading a charge against [illegible] and assaulting a reporter" of the rioters who [illegible] for the attack," was supported by competent evidence. If Petitioner's contention that there is

[illegible] of Decision by Court of Civil Appeals, 393

no evidence supporting the findings of the jury and the Louisiana Court of Appeal that the Associated Press report was false, should induce a re-examination of the evidence by this Court, it is respectfully suggested that testimony supporting the Findings of falsity be considered, as follows:

i) Petitioner's witness, Rev. Duncan Gray, Jr., who testified that he was in the exact area where Savell's dramatic description placed Walker as leading a 1,000 man charge before his speech on the mezzanine, and that he saw no such charge, and saw no participation by Walker in the activity of the crowd, other than his speech (R. 2448-2481).

ii) The news report of Savell, published by Associated Press on Oct. 3, 1962, wherein Savell describes, as an "eye-witness" "less than 6' from Walker" the violent details as to how Walker "assumed command" of a 1,000 man crowd, and led a charge against Federal marshals surrounding the Lyceum Building (R. 62-63).

iii) Petitioner's witness, Van Savell: Testified in extensive detail as to actions and conduct of Walker in assuming command of the mob, and leading a charge against the Marshals, with a man on either side, holding to his arm. The purported facts were related in such detail as to leave no possibility of an honest mistake. Either he saw the events which he reported, or he deliberately fabricated the story, as found by the juries, both in Texas and Louisiana (R. 2552-2613).

iv) Petitioner's witness, Craig Ellis, who admitted that he had testified at Ft. Worth that there could have been no charge led by Walker before the speech on the mezzanine, but changed his testimony at the instant trial, to coordinate with the testimony of Savell. The conflict in the testimony of this witness,

alone, observed and evaluated by the jury, could have been sufficient to convince the jury that the Savell report and testimony were fabricated (R. 2280-2290).

v) Respondent's witness: Belman Morin: An Associated Press Senior Newsman, who was sent from New York to Oxford to cover the developing news story, and had no recollection of anyone, other than Savell, who had told him that Walker actually led a charge. No effort was made to reconcile the differences between the Associated Press report and the United Press report, for the reason that "we had absolute confidence in our man"* (having relied upon "our man" to furnish, for profit, so-called "hot news", Associated Press should not complain at "paying the freight" when his news is determined by the jury and Appellate Court to be "knowingly false") (R. 1687-1688).

vi) Associated Press Newsman, Ben Thomas: Called, as an adverse witness for Cross-examination, admitted that he had testified by deposition in March, 1964, that Savell had first reported from Oxford that Walker had talked to the students from the monument, and then led a charge. The witness changed his testimony, however, stating that after he had reviewed the dispatches, he believed that his original testimony by deposition was wrong as to the sequence of events.

vii) Associated Press Newsman, Ernest H. Fischer: Called by Respondent for Cross-examination, as an adverse witness, admitted that a "double standard"

* From Page 14, The Associated Press v. Walker, No. 150, October Term, 1966

... and broadcasting companies are ... and often make very large ... that inflict damage in the ... highly useful to the public ... pay the freight,"

existed in the New Orleans News Room of Associated Press in handling news concerning Respondent, Walker. He also admitted that Associated Press News Room improperly handled a report of Walker's Sanity Hearing on Nov. 21, 1962, by publishing reports of testimony by Government Psychiatrist Walker was of defective mentality on the "A" Wire, of world-wide circulation, and placing reports of testimony by a Court-appointed psychiatrist that Walker was of superior intelligence on the "B" Wire, of restricted local circulation (R. 1633-1634).

viii) Charles E. Ray: A responsible Newsman, who testified that he was News Director of Radio Station WTIX, New Orleans, was on the campus at Oxford at all times after Walker arrived, until after he made his speech, and afterward. He testified positively that Walker led no such charge. (With nine other witnesses, in addition to Walker, himself, positively refuting the Associated Press report that Walker had assumed command of the crowd and led a charge against the U. S. Marshals, Petitioner's assertion that the verdict of the jury and Finding of the Louisiana Court of Appeal that the Associated Press report was untrue has a hollow and uncertain sound.)

Upon substantially "identical" evidence* the Texas Appellate Court summarized the evidence as follows:

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* Ct. of Civ. Appeals, 2nd Sup. Judicial Dist. of Texas, Associated Press v. Edwin A. Walker, 362 S. W. (2) 471 (7/30/62, Writ of Error refused by Supreme Court of Texas on 2/6/63). The evidence with respect to truth or falsity of Associated Press report in Texas differed from the evidence in Louisiana only in that Associated Press produced no employee of Associated Press, including Savell, at the Texas trial. In Louisiana, Associated Press submitted to the jury its President, the witness Savell, and the Chief of the New Orleans News Bureau. The fabricated account of the "slip-shod" methods with which Associated Press defamed Walker with false charges may account for the much larger verdict that was returned in Louisiana.

"The crowd was disorganized. It was a leaderless group. Groups were milling aimlessly. No one, including Walker, made any effort to assume leadership. He maintained that he did not assume command of the crowd, did not lead a charge, and did not participate in the rioting. He was present for the sole purpose of observing. The jury saw him, observed his demeanor, heard what he said, and believed him."

The jury, in this case, has weighed the evidence under instructions that, if the publication was substantially true, a complete defense to Libel was presented. In holding for Respondent, the jury found that the defamatory statements were not substantially true.

It is respectfully submitted that the jury's verdict, and the judgment of the Louisiana Court of Appeal are supported by the evidence; and the Findings that the Associated Press report was false have not deprived the Petitioner of due process, requiring the intervention of this Court at the Constitutional Level.

Petitioner complains that "the prejudicial conduct of the Trial below constituted a clear denial of due process." Neither Petitioner's Brief nor Appendix thereto point out any allegedly prejudicial evidence, or remarks of counsel, to which objection was made, or exception taken, before submission of the case to the jury.

After an adverse verdict had been returned, Plaintiff did complain, by Motion for New Trial, which was overruled by the Trial Court, who had presided over the extensive Trial, and was in a position to know if the Defendant had been denied a fair Trial before the case was submitted to the jury. It is an established principle of Federal Law that a new Trial will not be granted where a party seeks to raise for the first time on Motion for New Trial, prejudice

from alleged improper argument to the jury. Butts v. Curtis Publ. Co. (USDC, N. D. Ga. 41), 35 F. (2) 809; Travelers Ins. Co. v. Bell (5 Cir. 51), 188 F. (2) 726; Thomson v. Bowles (8 Cir. 41), 125 F. (2) 467.

After consideration of extensive briefs by both parties, together with oral arguments, the Court of Appeal of Louisiana found that remarks to the jury were not entirely prejudicial; and, further, that "we may and do correct any such irregularity". The judgment was affirmed, after the amount of damage was reduced to $75,000, a most drastic reduction of damages, in view of the devastating impact upon Respondent from the false image created of him around the world by Associated Press.

The review by the Louisiana Court leaves no doubt that this reduction in damage far more than offset any

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"Appendix—Page 42a Apx. B:

"Appellants complain that the trial of the case denied to them due process of law, the right to a fair and impartial trial, and the protection of the Fourteenth Amendment to the United States Constitution, urging objection, first, that the remarks of plaintiff's counsel to the jury were improper and prejudicial, and second, that although appellants requested a special charge that punitive damages were not recoverable in Louisiana, the court nonetheless refused to give such instructions. The record discloses the trial judge gave the following instructions to the jury:

'You are to disregard any remarks of counsel which you find to be inconsistent with the evidence in the case or the law as charged you by the Court.

'The general law is that the reparation should be equal to the injury received, and that no one should be allowed to unjustly enrich himself at the expense of another.

* * * * * * *

'If you should find that the plaintiff is entitled to a verdict in this case, you should allow such sums as will fairly and reasonably, in your best judgment, based on the evidence in the case, compensate him for the damages sustained, but only for those claimed in the petition and not to exceed the amounts so claimed [illegible]

"In the presentation of the plaintiff's case to the jury it is charged that his counsel demanded damages of $1,000 for each of the 1200 newspapers members of the [illegible]

theoretical impact upon Petitioner from the alleged prejudicial incident in the Trial.

While the "underlying cause of action", referred to in Petitioner's Proposition 3, involving the truth or falsity of Petitioner's defamatory report, having been established to the satisfaction of a trial jury and two Appellate Courts, having constitutional authority to review the facts, and with the false report having originated from a purported eye-witness employee of Petitioner under circumstances where "knowing" was a necessary element of the fabrication, no constructive purpose would be accomplished by a re-trial of this lawsuit. Under the circumstances involved, it appears that the final outcome has been more fair to Petitioner than to Respondent.

3. By its fifth Proposition, Petitioner seeks to re-litigate the issue of venue which has previously been passed upon by both Appellate Courts in Louisiana and by this Court**.

In passing upon the venue question, the Louisiana Court construed the venue statutes*** applicable to tort actions

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that he further made inflammatory remarks, such as 'These people need a lesson. You have got to teach them' and appealed to racial prejudice. Examination of the purported remarks to the jury in view of the charges given by the district judge, do not appear to us to be unduly prejudicial. However, appellants' contentions are without merit as this court is one to which the appeals are upon both the law and the facts. Article 7, § 29, Louisiana Constitution, 1921. We may and do correct any such irregularity. The contention relating to punitive damages is likewise untenable by reason of proper instructions by the court and this court's Constitutional powers."

** See opinion of Louisiana Court of Appeal, Edwin A. Walker, Plaintiff-Appellee, v. The Associated Press, et al., Defendant-Appellants (Apx. A, Petition for Writ ... p. 43a).

*** See opinion of Louisiana Court of Appeal, Edwin A. Walker, Plaintiff-Appellee, v. The Associated Press, et al., Apx. B, p. 10a, Apx. to Petition for Writ ... Opinion of Supreme Court of Louisiana, Edwin A. Walker v. The Associated Press, et al., Apx. B, p. 30a, Apx. to Petition for Writ ... Per Curiam Decision of this Court, same ... Art. 42, 43, 45, 71-74.

and concluded that this Libel action was properly brought in Caddo Parish.

Petitioner seeks a new rule, however, establishing a separate privileged sanctuary for the Defendant in a Libel action that does not apply to any other tort. Responsibility for creation of this new legal structure is sought in this Court, under the theory that there is conflict between construction by State Courts of their respective ways statutes involving State Libel Laws which may present a question under the First and Fourteenth Amendments.

Conflict in Decisions by various Circuits has compelled this Court to grant certiorari. Rogers v. Quon, 327 U. S. 198. But it seems to be the inclination of this Court that, if reasonably avoidable, this Court should not assume responsibility, as a Court of first instance, for determination of varied rules of local law prevailing in "forty-eight states". Halvering v. Stuart (1936), 297 U. S. 164. Even where conflict exists between Circuits, where the questions are controlled by State Law, this Court has expressed reluctance to grant certiorari, recognizing that "the conflict may be merely corollary to a permissible difference of opinion in the State Courts". Rubin v. N. Y. Life Ins. Co. (1938), 304 U. S. 202.

The authorities relied upon in Petitioner's brief further illustrate the problems to be encountered if this Court should assume responsibility of co-ordinating local procedures. In O'Reilly v. [illegible] Printing Co. (Minn., 39), 21 F. (2) 537, the State Court followed the venue statute applicable to corporations, permitting action in the County where the cause of action arose, rather than the Common Law Rule permitting action where the Libelous Article was circulated.

In Age-Herald Pub. Co. v. Huddleston (Ala., [illegible]), 38 So. 192, the State Court held that the cause of action contemplated by the State Statute occurred in the County

where the newspaper was published, and followed the corporate venue statute.

In the instant case, the Louisiana Statute provides venue where the wrongful act occurred or where the damages were sustained.* The Louisiana Courts, with approval of this Court, have construed the Statute according to its ordinary meaning.

In **Forman v. Miss. Publ. Corp.** (Miss. 43), 14 So. (2) 344, it was also held that the cause of action accrued where the newspaper was published not where it was circulated. Again, the difference in Statutes is decisive. Had the Mississippi Statute provided venue where damages were sustained, as in Louisiana, the outcome in **Forman** would obviously have been different.

It is respectfully submitted the local venue Statutes have been properly construed by the Louisiana Court, and its judgment, approved by this Court, should be allowed to stand.

Respectfully submitted,

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* C. C. P. Article 74.